

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel

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AUG 18 2020

Attention: President and CEO
BMW of North America, LLC
300 Chestnut Ridge Road
Woodcliffe Lake, NJ 07677

Low Emission Vehicle Program Enforcement Discretion for Motor Vehicle Manufacturers Subject to 6 New York Codes Rules and Regulations Part 218

Dear President and CEO:

This is to advise you that in consideration of the Settlement Agreement between the California Air Resources Board ("CARB") and BMW of North America, LLC ("Settlement Agreement"), the New York State Department of Environmental Conservation is exercising its enforcement discretion to allow BMW of North America, LLC to comply with the Settlement Agreement commitments. As of the effective date of the Settlement Agreement, the New York State Department of Environmental Conservation will exercise its discretion through Model Year 2026 to not enforce against BMW of North America, LLC the fleetwide, light-duty motor vehicle greenhouse gas ("GHG") emissions standards ("Vehicular GHG Emission Standards") New York has adopted in 6 New York Codes Rules and Regulations Part 218 ("Enforcement Discretion"), provided that BMW of North America, LLC meets the condition set forth in this Enforcement Discretion. The New York State Department of Environmental Conservation undertakes this Enforcement Discretion in reliance on the BMW of North America, LLC's commitments in the Settlement Agreement.

Background

CARB and BMW of North America, LLC voluntarily entered into the Settlement Agreement based on a mutual interest in mitigating their respective risks and resolving potential legal disputes concerning the authority of CARB and the states that have adopted California's motor vehicle emissions standards pursuant to Section 177 of the Clean Air Act, 42 U.S.C. § 7507 ("Section 177 States") to adopt and enforce Vehicular GHG Emissions Standards for vehicles manufactured by BMW of North America, LLC for Model Years 2021-2026 in light of the SAFE Rule Part One and Part Two, as set forth in the Settlement Agreement.

Ongoing and potentially lengthy litigation over the SAFE Rule Part One and Part Two leads to regulatory uncertainty and subjects BMW of North America, LLC to considerable enforcement risk. BMW of North America, LLC entered into the Settlement Agreement, recognizing that it offers BMW of North America, LLC compliance flexibility and greater certainty to plan for its nationwide fleet.

The SAFE Rule Part One and Part Two, and the related litigation, also entail risks that CARB and the Section 177 States may not be able to enforce the Vehicular GHG Emissions Standards and thereby achieve their GHG reduction goals. The Settlement Agreement provides CARB and the Section 177 States, including New York, among other things, greater certainty regarding continuing automotive GHG emission reductions during Model Years 2021-2026.

CARB and the Section 177 States, including New York, have taken the position that they may enforce the Vehicular GHG Emissions Standards, including for periods for which EPA purported to revoke California's Clean Air Act waiver of federal preemption for its vehicular GHG emissions standards (and with them, New York's Vehicular GHG Emissions Standards), if the revoked portions of the waiver are reinstated and if the actions in the SAFE Rule Part One are vacated. The New York State Department of Environmental Conservation may exercise enforcement discretion with respect to such authority.

The New York State Department of Environmental Conservation has determined that the BMW of North America, LLC's Settlement Agreement commitments will result in GHG emissions reductions and will deliver environmental benefits that may not be realized in the absence of the Settlement Agreement.

Conditions of Enforcement Discretion

BMW of North America, LLC must meet all the conditions of this Enforcement Discretion, as set forth below in order to be eligible for this Enforcement Discretion.

BMW of North America, LLC must comply with all terms and conditions of the Settlement Agreement, including any modifications made in accordance with provisions of the Settlement Agreement.

Acknowledgements

In exercising this Enforcement Discretion, the New York State Department of Environmental Conservation acknowledges that BMW of North America, LLC's compliance with the Settlement Agreement will be enforced exclusively in accordance with the terms of the Settlement Agreement. As such, the New York State Department of Environmental Conservation acknowledges the enforcement, mitigation, dispute resolution, and Force Majeure mechanisms as implemented in accordance with the Settlement Agreement.

The New York State Department of Environmental Conservation further acknowledges the modification and termination terms as implemented in accordance with the Settlement Agreement.

The New York State Department of Environmental Conservation acknowledges that BMW of North America, LLC is relying on the New York State Department of Environmental Conservation's exercise of its enforcement discretion, as described herein, as an important and material basis for the BMW of North America, LLC's decision to enter into the Settlement Agreement.

Reservation of Rights

Nothing in this Enforcement Discretion relieves BMW of North America, LLC's obligation to comply with all applicable portions of the New York State Department of Environmental Conservation's 6 New York Codes Rules and Regulations Part 218 other than the Vehicular GHG Emission Standards, including its Low Emission Vehicle Program requirements not addressed specifically by this Enforcement Discretion.

This document is not a regulation and does not constitute final agency action.

No Party other than BMW of North America, LLC may rely on this Enforcement Discretion to create rights, duties, obligations or defenses, implied or otherwise, enforceable in any judicial or administrative proceeding with the New York State Department of Environmental Conservation. In addition, this Enforcement Discretion does not exempt any person from complying with the other requirements in 6 New York Codes Rules and Regulations Part 218 or any other applicable local, state or federal law.

If you have any questions concerning the conditions of this directive, please contact Colleen McCarthy at (518) 402-9203.

Sincerely,



Thomas S. Berkman
Deputy Commissioner
and General Counsel

c: Attention: Vice President of Legal
and General Counsel
BMW of North America, LLC
300 Chestnut Ridge Road
Woodcliffe Lake, NJ 07677

Colleen McCarthy
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